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July 26, 2006

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Fax Number: (571) 273-8300

Serial No.: 09/932,531

Filing Date: August 17, 2001

Attorney Docket No.: B-124

Examiner: Palabrica, R.J.

Group Art Unit: 3641 Confirmation No.: 4276

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Special Instructions: Attached: Response to Notification of Non-Compliant Appeal Brief

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In Re Application of:)	Examiner: Palabrica, R.J.
)	
AKERS, Douglas, W.)	Group Art Unit: 3641
)	
Serial No. 09/932,531)	Confirmation No.: 4276
)	
Filing Date: August 17, 2001)	
)	
For: APPARATUS FOR PHOTON)	
ACTIVATION POSITRON)	
ANNIHILATION ANALYSIS)	
)	
Atty Dkt: B-124)	

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

On July 19, 2006, the patent appeal specialist, Timothy Cole, issued a notice of non-compliant appeal brief based on the belief that, although claim 8 was still pending, it was incorrectly listed in the claims appendix as cancelled. For the reasons explained below, claim 8 is in fact cancelled and was thus correctly shown as cancelled in the claims appendix.

In the office action response of December 20, 2005, on page 26, the appellant stated that claim 8 was cancelled. However, by mistake, in the listing of claims, the appellant listed claim 8 as previously presented.

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Nonetheless, in his final office action, dated February 14, 2006, the examiner pointed out the mistake. Thus, the examiner correctly stated that claim 8 had been cancelled and was not at issue. Indeed, in the final office action, the examiner noted that the claims at issue were claims 4, 20-24, 26-28, and 30-40, with claim 4 being withdrawn. Claim 8 was not the subject of any rejection in the final office action.

Therefore, in the appeal brief, filed on June 21, 2006, the appellant stated in the status of claims that the pending, rejected and appealed claims were claims 20-24, 26-28, and 30-40. The appellant also stated, "Appellant agrees with the examiner that claim 8 has been cancelled."

Since both the examiner and the appellant agree that claim 8 has been cancelled, the appellant believes that the appeal brief is fully compliant in listing claim 8 as cancelled. Therefore, no summary of the claimed subject matter of claim 8 is required.

On July 25, 2006, counsel for the appellant spoke with the patent appeal specialist, Timothy Cole, by telephone to explain the status of claim 8 as cancelled. The patent appeal specialist agreed, but indicated that a response should be submitted, setting forth the status of claim 8 and the mistaken listing of claim 8 as previously presented in the December 20, 2005 office action response.

The appellant believes that the issues raised in the notification of non-compliant appeal brief have been rectified and that the notification should be withdrawn. If any

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questions or issues remain to be resolved, the examiner or patent appeal specialist is requested to contact the applicants' attorney at the telephone number listed below.

Certificate of Facsimile Transmission

I hereby certify that this correspondence is being submitted to the United States Patent and Trademark Office via facsimile at (571) 273-8300 on this 26th day of July, 2006.

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Chasity C. Rossum

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